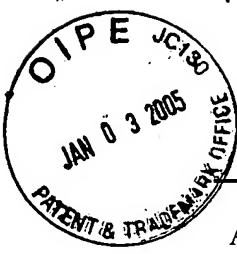


ITW



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/607,023
Confirmation No.: 5563
Filed: June 27, 2003
Inventor(s):
Lin et al.

Title: TETRACALCIUM
PHOSPHATE (TTCP)
HAVING CALCIUM
PHOSPHATE WHISKER
ON SURFACE

§ Examiner: C.M. Koslow
§ Art Unit: 1755
§ New Atty. Dkt. No: 5937-00204
§
§
§
§
§
§
§
§
§
§

CERTIFICATE OF MAILING
UNDER 37 C.F.R. §1.8
DATE OF DEPOSIT: DEC 30, 2004
I hereby certify that this correspondence is being deposited with
the United States Postal Service with sufficient postage as first
class mail on the date indicated above and is addressed to:
Commissioner for Patents
Alexandria, VA 22316-1450

Jackie L. Pitre

TRANSMITTAL OF MISCELLANEOUS DOCUMENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant encloses the following:

- (1) Election Under 37 C.F.R. §§ 3.71 and 3.73 and Power of Attorney (2 pages);
- (2) Notice of Change of Correspondence Address (1 page);
- (3) Technology Assignment Agreement (12 pages); and
- (4) A return post card.

Please note, Applicant has enclosed a copy of a Technology Assignment Agreement from
Cana Lab Corporation to Calcitec, Inc. for the above-referenced application.

Lin et al.
10/607,023

Should any fees be required, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C. Deposit Account No. 50-1505/5937-00204/EBM.

Respectfully submitted,



Mark R. DeLuca
Reg. No. 44,649

Patent Agent for Applicant

MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C.
P.O. BOX 398
AUSTIN, TX 78767-0398
(512) 853-8800 (voice) (512) 853-8801 (facsimile)
Date: 12/30/04

Mark K. Brightwell	Reg. No. 47,446
Kay A. Colapret	Reg. No. 52,759
Steve J. Curran	Reg. No. 50,664
Mark R. DeLuca	Reg. No. 44,649
Heather L. Flanagan	Reg. No. 54,101
Russell Henrichs	Reg. No. 50,354
Erik A. Heter	Reg. No. 50,652
Jeffrey C. Hood	Reg. No. 35,198
Rajiv Jauhari	Reg. No. 55,850
B. Noël Kivlin	Reg. No. 33,929
Robert C. Kowert	Reg. No. 39,255
Mario J. Lewin	Reg. No. 54,268
Lawrence J. Merkel	Reg. No. 41,191
Eric B. Meyertons	Reg. No. 34,876
Neal E. Persky	Reg. No. 53,452
Liza Philip	Reg. No. 51,352
David W. Quimby	Reg. No. 39,338

Lin et al.
10/607,023

Rory D. Rankin	Reg. No. 47,884
Gareth Sampson	Reg. No. 52,191
Chris Thompson	Reg. No. 43,188
Mark S. Williams	Reg. No. 50,658

each an attorney or agent of the firm of MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C., as its attorney or agent for so long as they remain with such firm, with full power of substitution and revocation, to prosecute the application, to make alterations and amendments therein, to transact all business in the Patent and Trademark Office in connection therewith, and to receive any Letters Patent, and for one year after issuance of such Letters Patent to file any request for a certificate of correction that may be deemed appropriate.

Pursuant to 37 C.F.R. § 3.73, the undersigned has reviewed the evidentiary documents, specifically the Assignment to Calcitec, Inc., referenced below, and certify that to the best of my knowledge and belief, title remains in the name of the Assignee.

Please direct all communications as follows:

Eric B. Meyertons, Esq.
MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C.
P.O. BOX 398
AUSTIN, TEXAS 78767-0398
(512) 853-8800 (voice)
(512) 853-8801 (facsimile)

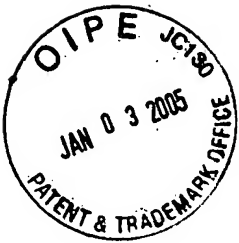
ASSIGNEE:

CALCITEC, INC.

By: 

Title: VP Clinical & Reg Affairs

Date: 12/27/07
ASSIGNMENT: _____ Enclosed for recording



CALCITEC, INC.

TECHNOLOGY ASSIGNMENT AGREEMENT

This TECHNOLOGY ASSIGNMENT AGREEMENT (the "Agreement") is entered into as of March 21, 2003 (the "Effective Date") by and among Calcitec, Inc., a Delaware corporation (the "Company"), Jiin-Huey Chern Lin, an individual and Chien-Ping Ju, an individual (each a "Founder") and Cana Lab Corporation, a Taiwan corporation ("Cana" and collectively with the Founders the "Assignors").

Founders jointly own Founder Technology (as defined below), with each Founder owning an undivided, equal ownership interest to such Founder Technology. Cana owns the Cana Technology (as defined below).

In consideration of each Founder's continuing consulting relationship with the Company and each Assignor's receipt of Common Stock of the Company, and the mutual promises contained herein, the parties agree as follows:

1. **Definitions.** For purposes of this Agreement, the following terms shall have the following meanings:

(a) "**Cana Technology**" means the patents and patent applications listed on Exhibit A.

(b) "**Encumbrance**" means any mortgage, pledge, security interest, lien, option, charge, claim, covenant, condition, restriction, encumbrance or any third-party claim of any kind or nature whatsoever.

(c) "**Intellectual Property Rights**" means all copyright rights, patent rights, trademark rights, trade secret rights, moral rights, rights of publicity, authors' rights, contract and licensing rights, goodwill and all other intellectual property rights as may exist now and/or hereafter come into existence and all applications therefor and registrations, renewals, continuations, continuations-in-part and extensions thereof, regardless of whether such rights arise under the law of the United States or any other state, country or jurisdiction.

(d) "**Founder Technology**" means all Technology other than Cana Technology.

(e) "**Technology**" means the inventions, original works of authorship, developments, concepts, know-how, improvements or trade secrets related to the field of calcium phosphate cement which are listed on Exhibit A and otherwise developed as of the date of execution of this Agreement and thereafter, whether or not patentable, registrable under copyright, trademark or other laws or otherwise protectable under any Intellectual Property Right.

2. **Assignment.** Each Assignor hereby assigns to the Company all of such Assignor's right, title and interest in and to the Technology, including without limitation any and all Intellectual Property Rights included in, covering, or otherwise relating to the Technology.

3. **Obligations and Rights of Founders.**

(a) **Deliverables.** On the Effective Date, Assignors shall deliver to Company all the deliverables specified in Exhibit B. Assignors shall not retain any copies of the deliverables or any other materials embodying, describing, or relating to the Technology, whether such copies are in paper form, on computer media or stored in another form; provided, however, that Founders shall be permitted to retain copies of the deliverables as appropriate for the purpose of Founders' ongoing research and publication efforts.

(b) **Intellectual Property Rights.** Each Assignor agrees to take all such actions and execute all such documents as requested by the Company, at the Company's expense, in order to secure the Company's rights in and to the Technology and any and all Intellectual Property Rights included in, covering, or otherwise relating to the Technology and to otherwise effect the intent of this Agreement, including without limitation (i) the disclosure to the Company of all pertinent information and data with respect thereto and (ii) the execution of all applications, specifications, oaths, assignments, recordations and other instruments and performance of all actions as the Company shall deem necessary or appropriate in order to apply for, obtain, maintain, enforce, and transfer such rights and in order to assign and convey to the Company, its successors, assigns and nominees the sole and exclusive rights, title and interest in and to such Technology, and Intellectual Property Rights included in, covering, or otherwise relating to the Technology. Each Assignor further agrees that such Assignor's obligations under this Section 3(b), including without limitation to execute or cause to be executed, when it is in such Assignor's power to do so, any such instrument or papers, shall continue until the expiration of the last such Intellectual Property Right to expire in any country of the world. If the Company is unable because of any Assignor's mental or physical incapacity or unavailability or for any other reason to secure any Assignor's signature to apply for or to pursue any application or registration for any United States or foreign Intellectual Property Right included in, covering, or otherwise relating to the Technology assigned to the Company as above, then such Assignor hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as such Assignor's agent and attorney in fact, to act for and in such Assignor's behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the application for, prosecution, issuance, maintenance or transfer of letters patent, copyright or other registrations thereon with the same legal force and effect as if originally executed by such Assignor. Each Assignor hereby waives and irrevocably quitclaims to the Company any and all claims, of any nature whatsoever, which such Assignor now or hereafter has for infringement of any and all Intellectual Property Rights assigned to the Company.

(c) **Maintain Free and Clear.** No Assignor shall attempt to license or grant any interest in or to the Technology or otherwise subject the Technology to any Encumbrance.

(d) **Publication.** Both the Founders and students of the Founders shall be permitted to publish data related to the Technology; provided, however, that Founders shall provide the Company with reasonable notice of pending publications and copies thereof. In addition, the Company shall be permitted to provide input on publications and delay the release thereof if the Company determines that such a delay is appropriate.

(e) **Termination of Consulting Relationship.** In the event that the Company or any successor in interest of the Company terminates either Founder's consulting relationship with the Company, the Company shall, upon such termination, grant such Founder a non-exclusive, non-transferable license (without the right to sublicense) to use and modify the Technology solely for non-commercial research purposes.

4. **Assignors' Representations and Warranties.**

Each Assignor represents and warrants that, as of the Effective Date:

(a) **Due Authorization.** This Agreement constitutes the legal, valid and binding obligations of such Assignor, enforceable in accordance with its terms.

(b) **No Conflict.** The execution and delivery by such Assignor of this Agreement and the consummation of the transactions contemplated hereby will not violate or conflict with any law to such Assignor's knowledge, or result in any breach of or constitute a default (or an event which with notice or lapse of time or both would become a default) or create any Encumbrance under any contract or agreement to which such Assignor is a party or by which such Assignor or the Technology may be bound or affected. Such Assignor represents that such Assignor's performance of all terms and conditions of this Agreement has not breached and will not breach any agreement to keep in confidence proprietary information, knowledge or data acquired by such Assignor prior to this Agreement.

(c) **Consents.** No approval, authorization, consent or order or action of, or any filing with or notice to, any individual, entity, court, administrative agency or governmental authority is required for the execution and delivery by such Assignor of this Agreement and other documents or the consummation of the transactions contemplated hereby.

(d) **Title and Ownership.** Founders are the joint owners of all right, title, and interest in and to the Founder Technology, with each Founder owning an undivided, equal ownership interest in and to the Technology, and have good, valid and marketable title to the Technology free and clear of all Encumbrances. Cana is the sole owner of all right, title and interest in and to the Cana Technology. Assignors have the right to transfer to the Company the exclusive right, title and interest in and to the Technology.

(e) **Litigation.** There are no claims, actions, suits, proceedings, arbitrations or investigations pending or, to such Assignor's knowledge, threatened against such Assignor or any other person or entity relating to the Technology or contesting the validity, ownership of, or right to use, sell, license or dispose of the Technology.

(f) **Intellectual Property.** Such Assignor has taken all necessary and desirable action to establish and preserve the Assignor's ownership with respect to the Technology. To such Assignor's knowledge, there is no use or infringement by others of any of the Technology, or any of any Assignor's Intellectual Property Rights pertaining thereto. To such Assignor's knowledge, the Technology and the use thereof by the Company does not and will not violate or infringe any Intellectual Property Rights of any person or entity.

(g) **Taxes.** All sales and use taxes, real and personal property taxes, gross receipts taxes, documentary transfer taxes, employment taxes, withholding taxes, unemployment insurance contributions and other taxes or governmental charges of any kind, however denominated, including any interest, penalties and additions to tax in respect thereto, for which Company could become liable as a result of acquiring the Technology, or which could result in an Encumbrance against the Technology (collectively, "**Taxes**") have been paid for all periods (or portions thereof) prior to and including the Effective Date. Such Assignor and any other person required to file returns or reports of Taxes has duly and timely filed all returns and reports of Taxes required to be filed prior to such date, and all such returns and reports are true, correct, and complete. There are no liens for Taxes on any of the Technology. There are no pending or threatened proceedings with respect to Taxes, and there are no outstanding waivers or extensions of statutes of limitations with respect to assessments of Taxes.

(h) **Access to Information.** Such Assignor has disclosed and delivered to Company all books, records, files, documents and contracts of such Assignor related to the Technology, including without limitation, all documentation related to Intellectual Property Rights registration or application, or any and all Encumbrances therein.

5. **Confidentiality.** After the Effective Date, Company shall own the confidential information of and related to the Technology and each Founder shall hold such confidential information in strict confidence pursuant to the Confidential Information and Invention Assignment Agreement dated March 21, 2003 between Company and such Founder and Cana shall hold such confidential information in strict confidence pursuant to the Non-Disclosure Agreement dated March 21, 2003 between Company and Cana.

6. **General.**

(a) **Governing Law and Jurisdiction.** This Agreement shall be governed by and construed under the laws of the State of California without regard to conflict of laws principles. The parties to this Agreement hereby consent to the exclusive jurisdiction of and venue in the federal and state courts located in Santa Clara County, California.

(b) **Counterparts.** This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

(c) **Waivers; Modification.** No failure or delay (in whole or in part) by any party in exercising any right, power, or remedy under this Agreement shall operate as a waiver of any such right, power, or remedy. No waiver or modification of any provision of this Agreement

shall be effective unless in writing and signed by all parties. Any waiver by any party of any provision of this Agreement shall not be construed as a waiver of any other provision or of such provision on any other occasion.

(d) **Severability.** In the event any provision of this Agreement (or portion thereof, including the Exhibits hereto) is determined by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, such provision shall be deemed to have been deleted from this Agreement, while the remainder of this Agreement shall remain in full force and effect according to its terms.

(e) **Agreement.** This Agreement (including the Exhibits hereto) constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes any and all other agreements, written or oral, that the parties heretofore may have had with respect to the subject matter herein.

(f) **Assignment.** No party shall transfer, assign or delegate this Agreement or any rights or obligations hereunder, in whole or in part, whether voluntarily, by operation of law or otherwise, without the prior written consent of the other party. Any purported transfer, assignment or delegation without such prior written consent will be null and void and of no force or effect. Notwithstanding the foregoing, the Company shall have the right to assign this Agreement to any successor to substantially all its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise. Subject to the foregoing, this Agreement inures to the benefits of successors and assigns of the Company, and is binding upon each Founder's heirs and legal representatives and Cana's successors and assigns.

(g) **Advice of Counsel.** Each party acknowledges that, in executing this Agreement, such party has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms and provisions of this Agreement. This Agreement shall not be construed against any party by reason of the drafting or preparation thereof.

(h) **Notice.** All notices permitted or required under this Agreement shall be in writing and shall be delivered in person or mailed by first class, registered or certified mail, postage prepaid, to the address of the party specified in this Agreement or such other address as either party may specify in writing. Such notice shall be deemed to have been given upon receipt.

If to Company:
Calcitec, Inc.
Address: 20057 Glen Arbor Court
Saratoga, CA 95070
Attn: Roger Lipton
Phone: (408) 868-9440

If to Assignors:

Jiin-Huey Chern Lin
911 Tower Road
Winnetka, IL 60093

Chien Ping-Ju
16 Pinewood Drive
Carbondale, IL 62901

Cana Lab Corporation
4f, No.420, Sec. 1
Keelung Road
Taipei, Taiwan

[Signature Page Follows]


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

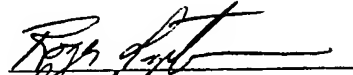
ASSIGNORS:

COMPANY:

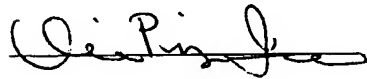
JIIN-HUEY CHERN LIN

CALCITEC, INC.



By: 
Title: President, CEO

CHIEN-PING JU



CANA LAB CORPORATION

By: _____
Title: _____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

ASSIGNORS:

JIIN-HUEY CHERN LIN

CHIEN-PING JU

CANA LAB CORPORATION

By:
Title:

COMPANY:

CALCITEC, INC.

By: _____
Title: _____

EXHIBIT A

Patents and Patent Applications; Technology

All technology related to the fabrication of calcium phosphate cement as defined in the patents and patent applications attached as Attachment A hereto.

ATTACHMENT A



Attachment A
Patents and Patent Applications

<u>Country Applied</u>	<u>Local File</u>	<u>Application Number</u>	<u>Application Date</u>	<u>Status Date</u>	<u>Patent Number</u>	<u>Issue Date</u>
Calcium Phosphate Cement, Use and Preparation Thereof						
US	PUS11088	09/615384	13-Jul-00			
JP	PJP11088	2000-319981	9-Oct-00			
CN	LIN11088CN	1119981-4	5-Jul-01			
EP	LIN11088EP	1117041-2	12-Jul-01			
US	PUS11088CIP	10/414582	16-Apr-03			
TW	LIN11088	90116-182	1-Jul-02			
Process for Preparing a Paste from Calcium Phosphate Cement						
US	LIN11254US	09/941576	30-Aug-01		6,616,742	9-Sep-03
CN	LIN11254CN	02142172-2	9-Aug-02			
TW	LIN11254	91119298	26-Aug-02			
Process for Producing Fast Setting Bioresorbable Calcium Phosphate Cements						
US	PUS11154	09/351,912	14-Jul-99		6,379,453 B1	30-Apr-02
Method of Shortening a Working and Setting Time of a Calcium Phosphate Cement Paste						
US	LIN113555US	10/179,879	26-Jun-02		6,648,960	18-Nov-03
Process for Producing Fast Setting, Bioresorbable Calcium Phosphate Cements						
US	LIN11445US	10/328,019	26-Dec-02	21-Feb-03		
Tetracalcium Phosphate (TTCP) Having Calcium Phosphate Whisker on Surface						
US	LIN11521US	10/607,023	27-Jun-03	28-Jan-04		
Tetracalcium Phosphate (TTCP) Having Calcium Phosphate Whisker on Surface and Process for Preparing the Same						
US	LIN11521US01		6-Feb-04			
Spinal Fusion Procedure Using an Injectable Bone Substitute (Provisional)						
US		60/518,475	7-Nov-03			

EXHIBIT B

Deliverables

None